IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 258 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SAIYED MIRSAHEBMIYA RAHEMUMIYA

Appearance:

MR K.T. DAVE, APP for Appellant

Respondents No. 1, 3, 4 served

ABATED for Respondent No. 2

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/03/2000

ORAL JUDGEMENT

1. The present four respondents came to be tried by the Judicial Magistrate, First Class, Mehsana, for the offences punishable under Sections 324, 323, 325 and 504

of the Indian Penal Code and under Section 135 punishable under the Bombay Police Act. After trial, vide order dated 30th December, 1991, the Judicial Magistrate, First Class, Mehsana, came to acquit all the respondents from

the above charges and, therefore, being aggrieved, this Appeal is filed by the State. It appears that during Appeal, respondent No.2 Saiyed Motimiya Rahemumiya has expired and, therefore, appeal is abated against him.

2. The brief facts of the case be stated as under:

As per the complaint filed by Akbarkhan Rasulkhan Pathan of village Jakasana, Taluka and District Mehsana, the incident occurred on 13th December, 1986. As per the say of the complainant, in the evening at about 5 'O clock when he was present in his field in the village sim of Jakasana, original accused Nos.1 and 2 i.e. respondents Nos. 1 and 2 were passing through his field. The complainant advised the accused Nos. 1 and 2 to pass through the `shedha' of the field and not across the field. Accused No.1 was irritated and gave a Dharia blow on the forehead of the complainant. Accused respondent No.2 gave a "khandi" blow on right feet of the complainant. Respondent No.2 also gave a khandi blow on right hand of the complainant. At that time, remaining two accused numbers 3 and 4 came running and started giving abuses to the complainant. Accused No.3 i.e. respondent No.3 started beating the complainant with khandi. Respondent No.4 also started beating with the khandi. On shouting, Ambalal Panjaj Thakor and Samuben Panjaj, both came running as well as Vajarkhan Akabarkhan Pathan, son of the complainant and Rajiyabibi, daughter of the complaint came on the spot. Accused No.2 gave a khandi blow to Vajarkhan on head, accused No.3 started

beating Vajarkhan by "Khandi", accused No.4 gave Dharia blow to Rajiyabibi and accused thereafter left the place of the incident. After filing of the complaint, injured complainant Akbarkhan Resulkhan, Vajarkhan and Rajubibi were examined by Medical Officer, Santhal Government Dispensary and thereafter they were transferred to the Civil Hospital, Mehsana. After investigation, the above charge sheet was filed in the court of Judicial Magistrate, First Class, being Criminal Case No. 592 of 1987 and after recording of the evidence and full fledged trial, learned Judicial Magistrate, First Class, Mehsana, came to the conclusion that the prosecution was not able

to prove the case and hence the Appeal.

3. Learned APP Mr.K.T. Dave was heard on behalf of the State while notices are served on respondents No. 1, 3 and 4 but they have not appeared. Learned APP has urged that there are three injured witnesses. Their injuries are supported by the medical evidence of Dr. Narayanbhai Amdhabhai Prajapati. Medical Officer, Santhal, has been examined at Exh.38, who has produced the medical certificate of the injured, but the learned Judge has failed to consider the medical evidence in support of the injuries and oral evidence hence trial court and erred in acquitting the accused.

4. Learned APP has taken this court through the entire record of the case and the evidence of each of the witnesses was scrutinised. Learned APP Mr. Dave has urged that the learned Magistrate has not discussed the

medical evidence in support of the injuries received by the complainant and the witnesses. The question which arises is whether the prosecution has proved the incident occurred in the manner as narrated by the witnesses? Learned Magistrate has considered the evidence of the complainant and three other eye witnesses. In appreciating the evidence, learned Magistrate has come to the conclusion that the prosecution has failed to prove the incident as narrated in the complaint. On going through the evidence of the witnesses, it clearly appears that there are contradictions in the depositions of the complainant and other eye witnesses. In complaint, blows were given to Rasulmiya, which is not stated by the complainant in his deposition. There are major contradiction and omission amongst the evidence of eye witnesses as to who received injuries from whom and how injuries were received. As narrated by the learned Magistrate in his judgment, there are contradictions regarding injuries inflicted by the accused amongst three eye witnesses i.e. PW1 Akbarkha Rasukha, PW2 Vajarkhan and PW6 Rajiyabibi (Exhts. 32, 36 and 48) and, therefore, the learned Magistrate came to the conclusion that the incident has not been proved. Further, according to the prosecution theory, PW7 - Amuji Pujaji (Exh.50) was the witness of the incident but in his deposition he states that when he reached the scene of the offence, he only saw that the complainant was injured on his forehead, and stated that he was injured by accused No.1, though he has not been declared hostile by the prosecution. Above all these, the infirmity which

the prosecution case suffers is as to the scene of offence, which according to panchnama at Exhs. 40 and 45, the incident took place where the crop of corianders was standing but there were no marks of any sort, while the witnesses stated that the incident took place where the crop of wheat was standing. There is further infirmity in the case of the prosecution that the Investigating Officer has not been examined. Therefore, the defence of the accused is prejudiced.

5. In this view of the matter, the order of acquittal passed by the learned Magistrate is a reasoned order and requires no interference at all. Hence, maintaining the acquittal, this Appeal stands dismissed.

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